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No. 73-1245

In the Supreme Court of the United States

OCTOBER TERM, 1973

UNITED STATES OF AMERICA, ET AL., PETITIONERS

v.

RICHARD V. BISCEGLIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY MEMORANDUM FOR THE PETITIONERS

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This memorandum is filed in reply to respondent's contention (Br. in Op. 13-20) that our position in this case conflicts with the views expressed by Assistant Secretary of the Treasury Rossides during Senate hearings on the Currency and Foreign Transactions Reporting Act, Pub. L. 91-508, 84 Stat. 1114.

Respondent's contention is bottomed upon two related assumptions—that Assistant Secretary Rossides conceded in his testimony that internal revenue summonses could not be used to conduct a general survey of a bank's records and that the summons here represents an attempt to conduct such a survey. Respondent errs in both assumptions.

First, the Assistant Secretary nowhere conceded that the scope of the Internal Revenue Service's summons power was limited in the manner claimed by respondent.

To the contrary, the Assistant Secretary pointed out that it is at least arguable that the Service has statutory authority to employ "compulsory process for a survey of the records of a financial institution." Subcommittee on Financial Institutions, Senate Committee on Banking and Currency, *Hearings on S. 3678 and H.R. 15073*, 91st Cong., 2d Sess. 154, 174. His "concession" was merely that such use of the summons power would raise a "serious question" (*id.* at 154) under the Fourth Amendment. He did not, however, purport to resolve that constitutional question. But cf. *California Bankers Assn.* v. *Shultz*, No. 72-985, decided April 1, 1974. Thus even if the Service were here asserting a general survey authority, such an assertion would not conflict with the Assistant Secretary's description of the scope of the summons power.

But there is no question here of any such general survey of a bank's records. In arguing that the Service has exceeded its statutory powers, respondent has completely misconceived the nature and breadth of the summons in this case. The summons was issued to determine from whom the Commercial Bank of Middlesboro, Kentucky, had acquired four hundred badly deteriorated one hundred dollar bills, and the records sought were "deposit tickets reflecting cash deposits in the amount of $20,000.00 during the period from October 16, 1970, through November 16, 1970, plus * * * deposit tickets reflecting * * * cash deposits involving one hundred dollar bills totaling amounts equal to or in excess of $5,000.00 per deposit for a like period" (Pet. App. A, p. 5a). Thus the Service was requesting not "general access to recordkeeping" (*Hearings, supra*, at 154) but rather only the production of a very limited set of records.

Respondent greatly stresses the fact, acknowledged by the Assistant Secretary (*id.* at 154, 174), that internal revenue summonses ordinarily are used in connection with examinations of particular taxpayers. Of course, as we indicated above, the Assistant Secretary did not concede that the summons power could be used only in connection with such examinations. But respondent in any event errs in contending that the Service has proceeded in this case without focusing on particular taxpayers. The particular taxpayers under investigation are the persons or person who transferred the one hundred dollar bills to the Commercial Bank. Respondent's basic reliance is on the fact that the identity of the taxpayer or taxpayers in question has not yet been discovered by the Service. But the Assistant Secretary never suggested that determination of the identity of the taxpayers subject to examination was considered to be a prerequisite to issuance of a summons. Any such suggestion would of course have been incorrect. Issuance of "John Doe" summonses to banks in aid of investigations of unidentified taxpayers was a recognized practice at the time the Assistant Secretary testified. See, *e.g.*, *Schulze* v. *Rayunec*, 350 F. 2d 666 (C.A. 7), certiorari denied *sub nom. Boughner* v. *Schulze*, 382 U.S. 919.

In short, Assistant Secretary Rossides did not disavow the use of "John Doe" summonses, and it is the general validity of such summonses which is at issue here.

For the reasons stated above and in our petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

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